

Appn No. 09653,149

**REMARKS**

Claims 1-8, 10-25, and 34-75 are pending in the application and subject to a species restriction. However, Applicant asserts that the species definitions are unclear and ambiguous. Page 2 of the Office Action appears to define the species with respect to the claims. Pursuant to MPEP 806.04(e), Applicant notes that "Claims are definitions of inventions. *Claims are never species . . . Species are always the specifically different embodiments.*" (Emphasis in original). Accordingly, relying upon the claims as defining species is improper.

It is possible that the claim listings associated with Species I and II are merely intended by the Office to allege what claims read upon the species even though the Office Action is silent in this regard. To the extent that this is the case, Applicant asserts that such listings are incomplete and do not include all of the claims readable upon respective Species I and II. Pursuant to MPEP 806.04(f), "claims to be restricted to different species must recite the mutually exclusive characteristics of such species." (Emphasis added).

Merely for the purpose for complying with the restriction requirement and without admitting to the propriety of such requirement, Applicant hereby elects Species I, a method of forming a conductive layer using an ALD method, with traverse. Applicant traverses on the grounds that all claims read upon the elected species and requests consideration of claims 1-8, 10-25, and 34-75 in the next Office Action.

Respectfully submitted,

Dated: 11 Mar 2005

By: 

James E. Lake  
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